

SOURCE: 49 FR 11941, Mar. 28, 1984, unless otherwise noted.

Subpart 904.4—Safeguarding Classified Information Within Industry

904.401 Definitions.

Access authorization means an administrative determination that an individual is eligible for access to classified information or is eligible for access to, or control over, special nuclear material.

Applicant means an individual who has submitted an expression of interest in employment; who is under consideration by the contractor for employment in a particular position; and who has not removed himself or herself from further consideration or otherwise indicated that he or she is no longer interested in the position.

Classified information means information that is classified as restricted data or formerly restricted data under the Atomic Energy Act of 1954, or information determined to require protection against unauthorized disclosure under Executive Order 12958, Classified National Security Information, as amended, or prior executive orders, which is identified as national security information.

Facility clearance means an administrative determination that a facility is eligible to access, produce, use or store classified information, or special nuclear material.

Restricted data means all data concerning design, manufacture, or utilization of atomic weapons; production of special nuclear material; or use of special nuclear material in the production of energy, but excluding data declassified or removed from the restricted data category pursuant to Section 142, as amended, of the Atomic Energy Act of 1954 (42 U.S.C. 2162).

Review or background review means a Contractor's assessment of the background of an uncleared applicant or uncleared employee for a position requiring a DOE access authorization prior to selecting that individual for such a position.

[67 FR 14875, Mar. 28, 2002, as amended at 74 FR 23124, May 18, 2009]

904.402 General.

(a) The basis of Department of Energy's (DOE) industrial security requirements is the Atomic Energy Act of 1954, as amended, and Executive Orders 12958 and 12829.

(b) DOE security regulations concerning restricted data are codified at 10 CFR part 1045.

(c)(1) Section 234B of the Atomic Energy Act (42 U.S.C. 2282b) requires that DOE contracts include a clause that provides for an appropriate reduction in the fees or amounts paid to the contractor under the contract in the event of a violation by the contractor or any contractor employee of any rule, regulation, or order relating to the safeguarding or security of Restricted Data or other classified information. The clause is required for all DOE prime contracts that involve any possibility of contractor access to Restricted Data or other classified information. The clause is required to specify various degrees of violations and the amount of the reduction attributable to each degree of violation. The clause prescribed at 904.404(d)(6) (952.204–76, Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information) or the clause prescribed at 923.7003(f) (952.223–76, Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information and Protection of Worker Safety and Health) shall be used for this purpose unless the clause prescribed at 970.1504–5(b)(1) (970.5215–3, Conditional Payment of Fee, Profit, and Other Incentives—Facility Management Contracts) is used.

(2) The 952.204–76 clause entitled “Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information” and the 952.223–76 clause entitled “Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information and Protection of Worker Safety and Health” provide for reductions of fee or profit that is earned by the contractor depending upon the severity of the contractor's failure to comply with contract terms or conditions relating to the safeguarding of Restricted Data or other classified information. When reviewing